IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 28 of 1987

With

INCOME TAX REFERENCE No. 164 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX. Surat.

Versus

PANNA KNITTING INDUSTRIES. Surat.

Appearance:

MR BB Naik for applicant.

MR B.D. Karia, with RK Patel for Respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE K.A.PUJ

Date of decision: 12/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The Income Tax Appellate Tribunal, in I.T.R. No. 28 of 1987 for the Assessment Years 1980-81 and 1981-82, has referred the following question of law for the opinion of this Court:

"Whether, on the facts and in the circumstances of the case, and in law, the Tribunal was right in coming to the conclusion that the relief u/s. 80J of the I.T.Act should be allowed from the total income which is not confined to the income of the (new) units ?" [Bracketed portion is added by us].

2. Similarly, in ITR No. 164 of 1988 for the Assessment Year 1982-83, the following question of law was raised by the Income Tax Appellate Tribunal for the opinion of this Court:

"Whether on the facts and in the circumstances of the case, and in law, the Tribunal was right in coming to the conclusion that the relief u/s. 80J of the I.T. Act should be allowed from the total income (which is not confined to the income) of the new units ?" [Bracketed portion is added by us.]

3. Since a common issue is involved in both the References, the same are disposed of by this common judgment. The facts, giving rise to the present controversy, as narrated by the Tribunal in the Statement of Case, are that the assessee had made a claim u/s.80J in respect of certain units of machinery and the said claim was denied by the Income Tax Officer on the ground that the first assessment was for the Assessment Year 1975-76 and hence the relief under Section 80J of the Income Tax Act, 1961, was availed of by the assessee upto 1979-80 and that no separate books of accounts were maintained by the assessee for the units which were started and that the new units were merely for extension of the existing units.

4. Being aggrieved by the order of the Income Tax Officer, the assessee had preferred an appeal before the Commissioner of Income Tax (Appeals), Surat, who, while

disposing of the said appeal, granted the relief in favour of the assessee only in respect of profits from the new units.

5. Being aggrieved by this order, both the Revenue as well as the assessee preferred separate appeals before the Income Tax Appellate Tribunal. While disposing of the said appeals, the Tribunal rejected the appeal filed by the Department by holding that the Revenue had not disputed the issue regarding cost of the new units and the profits thereof were separately shown by the assesssee in the books of accounts. As far as the assessee's appeal is concerned, the assessee has relied on the Bombay Tribunal's decision in the case of Indo-French Time Industries Ltd., and following the said decision, the Tribunal has taken the view that the assessee was entitled to the benefit under Section 80J from the total income which was not confined to the income from the new units only.

6. It is pertinent to note that the Revenue has not challenged the finding given by the Tribunal in its appeal before the Tribunal. No dispute now, therefore, remains with regard to the fact that the units started by the assessee were the new units as the cost as well as the profit of the new units were separately shown by the assessee. The Revenue has come in the Reference before us only on the issue as to whether the relief under Section 80J of the IT Act should be allowed from the total income of the assessee or it is confined to the income from the new units.

7. We have heard Mr. B.B. Naik, learned Standing Counsel for the Revenue as well as Mr. B.D. Karia, learned advocate for the assessee. Looking to the plain reading of Section 80J of the Act, it is clear that the assessee is entitled to the relief under Section 80J of the Act on the basis of the total income of the assessee and it could not be confined to the income from the new units. Section 80J of the Act reads as under;

Deduction in respect of profits and gains from newly established industrial undertakings or ships or hotel business in certain cases.

"80J.(1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this

section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains [(reduced by the deduction, if any, admissible to the assessee under section 80HH [or section 80HHA)] of so much of the amoutn thereof as does not exceed the amount calculated at the rate of six per cent per annum on the capital employed in the industrial undertaking or ship or business of the hotel, as the case may be, [computed in the manner specified in sub-section (1A)] in respect of the previous year relevant to the assessment year (the amount calculated as aforesaid being hereafter, in this section, referred to as the relevant amount of capital employed during the previous year)."

From the above Section, it is clear that where the total gross income includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel, to which section applies, there shall, in accordance with and subject to the provisions of this Section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of so much of the amount thereof as does not exceed the amount calculated at the rate of 6% p.a. on the capital employed in the industrial undertaking or ship or business of the hotel, as the case may be in respect of the previous year relevant to the assessment year.

8. Looking to the provisions contained in Section 80J(1) of the Act, we are of the view that the Tribunal has not committed any error while holding that the assessee was entitled to the relief under Section 80J from the total income of the assessee. We, therefore, answer the question referred to us in both the References in affirmative, i.e., in favour of the assessee and against the Revenue. Both the References are disposed of accordingly with no order as to costs.

[R.K. Abichandani, J.]

rmr. [K.A. Puj, J.]